

**UNITED STATES GOVERNMENT
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29**

NORTH SHORE AMBULANCE
AND OXYGEN SERVICE INC.
Employer¹

and

Case No. 29-RC-11257

LOCAL 338, RETAIL WHOLESALE
DEPARTMENT STORE UNION,
UNITED FOOD AND COMMERCIAL WORKERS
Petitioner²

DECISION AND DIRECTION OF ELECTION

North Shore Ambulance and Oxygen Service Inc. (the Employer) provides ambulance and ambulette transportation services for patients throughout New York City. On October 7, 2005, Local 338, Retail Wholesale Department Store Union, United Food and Commercial Workers (the Petitioner) filed a petition under Section 9(c) of the National Labor Relations Act, seeking to represent a unit of approximately 80 emergency medical technicians (EMTs), medics, ambulette drivers and helpers employed out of the Employer's facility at 110-10 Northern Boulevard, Corona, New York. The Employer contends that the petitioned-for unit is inappropriate for bargaining, inasmuch as it does not include the dispatchers and yard employees employed at its Northern Boulevard facility, or the mechanics employed at the Employer's garage at 110-18 Corona

¹ The Employer's name appears as corrected at the hearing (Transcript p.14)

² The Petitioner's name appears as amended at the hearing. (See Board Exhibit 2).

Avenue, Corona, New York. The Employer contends that those three classifications share a strong community of interest with the petitioned-for classifications, and therefore must be included in the unit.

A hearing was held before Ashok Bokde, a hearing officer of the National Labor Relations Board. In support of its position on the bargaining unit, the Employer called its president and owner, Anthony Tufaro, to testify. The Petitioner called ambulette driver Ignatius Laurent to testify. The facts were generally undisputed, except where indicated below.

After considering the entire record, I conclude that the petitioned-for unit is appropriate for the purposes of collective bargaining. Accordingly, I will direct an election below in that unit.

Facts

General description of Employer's functions and facilities

It is undisputed that the Employer performs two types of work, via ambulance and ambulette. Ambulance work, which is performed by EMTs and medics, involves transporting ill or injured patients, typically to or from a hospital. Ambulette work, which is performed by drivers and helpers, involves non-emergency transportation to and from the patients' medical appointments or treatments, such as regularly-scheduled dialysis treatments.

Anthony Tufaro testified that the company has two facilities, located approximately 1.5 to 2 miles apart from each other. Although Tufaro described the Corona Avenue facility as the "main address," it appears that most employees work at the Northern Boulevard lot. The Northern Boulevard lot contains a parking area for the

vehicles, as well as office space for the dispatchers, billing office and other clerical functions. Operations manager Carl Bowman, who supervises employees and reports directly to Tufaro, has an office there. The yard employees and dispatchers also work at the Northern Boulevard lot. The EMTs, medics, ambulette drivers and helpers also check in at that facility, before going on the road with their vehicle, and then check out from that facility after their last assignment. The only employees described as working at the Corona Avenue facility were the mechanics, who repair vehicles at a garage there.

Emergency Medical Technicians (EMTs)

The Employer employs approximately 40 EMTs. As noted above, the EMTs respond to emergency calls, transporting ill or injured patients to and from the hospital. Tufaro testified that the EMTs essentially have three functions: driving the ambulances, assessing patients, and treating the patients when necessary.

EMTs are licensed by the New York State Department of Health, and are required to take a “refresher course” every three years. Their starting wage is between \$10.50 and \$11.50 per hour.

Since EMTs need to be available for emergencies at any time, they work in staggered shifts throughout the day and night. For example, one shift starts at 12:00 midnight. Tufaro testified that EMTs are “paid through lunch,” meaning that they are expected to work straight through their shift without a lunch break. They might be able to “grab” something to eat during the course of the day, but they do not get an official lunch break.

Tufaro testified that the EMTs are supervised by operations manager Carl Bowman.

Medics

The Employer employs eight medics, who also respond to emergency calls on the ambulances. Unlike the EMTs, medics generally do not drive the ambulances. However, they assess and treat patients, and are licensed to administer medications when necessary. Tufaro explained that the medics' classification requires a higher level of certification from the Department of Health, and from the Regional Emergency Medical Services Council of New York City (REMSCO). Medics are also required to take continuing education classes.

Tufaro testified that medics start at \$23 per hour. Like the EMTs, they work in staggered shifts throughout the day and night, and are "paid through lunch." The medics are also supervised by operations manager Bowman.

Ambulette drivers

The Employer employs approximately 30 ambulette drivers.³ As noted above, they drive patients to and from non-emergency medical appointments, such as dialysis treatments. Tufaro testified that most drivers work by themselves in an ambulette, transporting patients who do not need to be lifted (e.g., when a single driver can roll a wheelchair on ramps or elevators). However, they sometimes work with helpers on so-called two-person calls, when a patient needs to be carried up or down stairs.

Ambulette drivers do not treat patients, and their licensing does not involve any medical care. However, they must be licensed as drivers. Specifically, Tufaro testified that ambulette drivers must have a commercial driver's license (CDL) with a "BP endorsement" (authorizing them to drive up to 7 passengers, with no air brakes), a "19A

certification” (not explained), and a license from the New York City Taxi and Limousine Commission (TLC).

Petitioner witness Ignatius Laurent testified that he usually drives an ambulette by himself, but that he gets a helper “once in a blue moon.” He described a typical work day as follows. After reporting to the Employer’s Northern Boulevard location, Laurent inspects his vehicle. He submits a written inspection checklist in a basket in the office, right next to the dispatch area, and picks up a written list of patients. Then he “calls in” to a dispatcher (typically Stephen Hatcher in the morning), who tells him which patients to pick up. After he finishes the first group of assignments, he calls to let the dispatcher know he is ready for more assignments. (After 4:00 p.m., when Hatcher leaves, Laurent usually talks to dispatchers Norma Edwards or Sharon Rollins.) Laurent estimated that he usually transports between 10 and 15 patients per day. When there are no more assignments, he fills the ambulette’s gas tank and returns the ambulette to the Northern Boulevard lot. Finally, he submits the gas receipt, the ambulette keys, and some forms regarding the ambulette’s mileage and “tie down” (a mechanism for holding the wheelchairs in place) to the dispatch office before leaving.

Since ambulette drivers do not respond to emergency calls, the Employer does not need to schedule them around the clock. Most drivers start at staggered times in the morning (e.g., 7:00, 7:30, 8:00, and 8:30). Tufaro testified that there is no set ending

³ Ambulette drivers are often called simply “drivers,” but they are referred to herein as “ambulette drivers” in order to differentiate them from EMTs, who also drive.

time because they “never know when the day is going to end.” Laurent testified that he starts work at 7:30 a.m., but it not clear from the record when his work day ends.⁴

Drivers’ starting wage is \$8 per hour if they do not have a TLC license, then \$9 per hour once they get a TLC license. Laurent testified that one hour of pay is deducted per day, supposedly representing an unpaid lunch hour, although Laurent complained that drivers actually work through their shift with no lunch break.

Tufaro testified that the ambulette drivers are also supervised by Bowman. However, Laurent testified that he sees Bowman only “once in a while.” Bowman is not at the Northern Boulevard facility when Laurent arrives at 7:30 a.m., and then Laurent spends the rest of the day on the road, away from the facility. Sometimes when Laurent calls in to report a problem during the work day (e.g., incorrect patient address, dent in vehicle), if Bowman is not there, Laurent speaks to one of the dispatchers instead.

Helpers

The Employer employs only two helpers. As mentioned above, they help ambulette drivers with the “two person” calls, when a patient must be carried up or down stairs. No particular licensing is required to be a helper.

Tufaro testified that the helpers’ starting wage is \$6.50 per hour. They are supposed to get an unpaid hour for lunch. They are also supervised by Bowman.

Dispatchers

The Employer employs between four and seven dispatchers, depending on whether the combination EMT/dispatchers are included.

⁴ Laurent testified at one point that he works until “10:00, sometimes 9:00” (Tr. 87), but at another point until between 7:00 and 8:00 p.m. (Tr. 99), and then “6:00, sometimes 7:00” (Tr. 107).

It appears that, depending on the shift, as many as three dispatchers work at the same time. Tufaro explained that they work in three separate offices at the Northern Boulevard facility, so that the noise of their conversations with the drivers does not interfere with each others' ability to hear.

The Employer's "call-takers"⁵ first enter the patients' information into the Employer's computer system, including each patient's name, location and destination. Calls may come in directly from a patient, from a doctor's office, or occasionally from the "911" system. The dispatchers then read their computer screens to see which calls need to be covered, and dispatch the vehicles accordingly. When a dispatcher sees an emergency call (signaled by a red flashing symbol on the computer screen), he or she must send the next available ambulance.

There is no particular licensing requirement for working as a dispatcher. Nevertheless, all four of the Employer's current dispatchers previously worked as EMTs (Norma Edwards, Karen Malone, Sharon Rollins) or ambulette drivers (Stephen Hatcher). Tufaro explained that dispatchers do a better job if they understand what transpires in the field. One employee (Jose Andujar) was hired as a dispatcher in 2005, with no experience as a driver or EMT. Tufaro felt that Andujar could not handle the dispatching properly, and re-assigned him to work as a yard employee. Tufaro testified that dispatchers receive on-the-job training from fellow dispatchers, and occasional training from the dispatching software company.

⁵ The parties appear to agree that the "call takers" are excluded from the unit as office clerical employees.

Tufaro testified that the four dispatchers are assigned to work their regular shifts as dispatchers, at least 40 hours per week. However, if they choose to work additional hours to earn more money, they may go out on some calls. Tufaro stated that dispatchers Edwards, Malone and Rollins sometimes choose to work overtime as EMTs. For example, he estimated that Edwards goes out on calls about twice per week. (Tufaro did not know how often Malone goes out on calls.) Tufaro explained that he would never “pull” a dispatcher such as Edwards “off the dispatch board” during her regularly-scheduled hours, because he needs her to dispatch. It is strictly her choice if she elects to work additional hours as an EMT.⁶ Finally, Tufaro stated that dispatcher Hatcher, who previously worked as an ambulette driver, has not chosen to go out on any ambulette calls since becoming a dispatcher.

According to Tufaro, dispatchers are paid on an hourly basis, earning anywhere from \$10.50 to \$23 per hour. However, for some reason (not explained on the record), dispatcher Hatcher is paid a salary. Dispatchers are “paid through” lunch, usually “grabbing” something to eat at their desk while they continue to dispatch. The record does not indicate the dispatchers’ hours but, presumably, they work in staggered shifts to dispatch both the daytime calls and the nighttime emergency calls.

The dispatchers are also supervised by Carl Bowman.

Yard employees

The Employer employs six yard employees at the Northern Boulevard site.

Tufaro testified that yard employees clean the ambulances and ambulettes, check them

⁶ It should be noted that the Employer’s list of employees (Employer Exhibit 1) includes three people listed as “EMT/dispatchers”: Donna Harewood, Louisa Patron and Claudia Pitre. It appears that they work primarily as EMTs, not dispatchers. However, the record does not contain any detailed

for damage, check their gas, and periodically check their oil level. They also maintain the Employer's buildings there, including cleaning, vacuuming and removing garbage. They generally do not drive the vehicles on the road, except that one yard employee (James Pemberton) sometimes drives a vehicle to the Employer's Corona Avenue garage for repair. The other yard employees move vehicles around within the yard, and occasionally onto a nearby street if they need to "pull" a vehicle out. However, the yard employees do not drive vehicles to any health care facilities, and do not substitute as EMTs or ambulance drivers. Other than Jose Andujar (who worked unsuccessfully as a dispatcher, described above), the yard employees have not worked in other classifications.

Tufaro testified that yard employees work in various shifts (7:00 a.m. to 3:00 p.m., 3:00 p.m. to midnight, and 11:00 p.m. to 7:00 a.m.) to provide "around the clock coverage" of the yard.

There are no licensing requirements to work as a yard employee, other than a driver's license. Tufaro testified that their starting wage ranges from \$8 to \$10 per hour.

The yard employees are also supervised by Bowman.

Mechanics

The Employer employs two mechanics, who repair the vehicles. They work primarily at the Employer's Corona Avenue garage, although Tufaro testified that they occasionally go out to repair a broken-down vehicle on the roadside. They are the only employees who regularly report to the Corona Avenue site. Tufaro testified that employees from the Northern Boulevard site (such as yard employee James Pemberton)

information regarding those three individuals. If there is any dispute as to their eligibility to vote as EMTs,

may drive a vehicle to Corona Avenue garage for repair, or drive a mechanic to a roadside repair, but he did not indicate how often this happens. Similarly, on-road employees sometimes drive their vehicles to the garage for repair, but the record does not indicate how often this occurs.

The mechanics have not held any other jobs within the Employer's company, and there is no evidence that they ever substitute for other employees. Although there are no strict requirements for being a mechanic, Tufaro stated that he likes to hire people who are licensed to do New York State vehicle inspections, and/or who can do transmission work. The mechanics do not need a driver's license.

The mechanics work during the daytime, either 8:00 a.m. to 5:00 p.m., or 9:00 a.m. to 6:00 p.m. Their starting wage ranges from \$14 to \$16 per hour. Tufaro testified that they receive an unpaid hour for lunch. They are also supervised by Bowman.

Other information

As indicated above, Tufaro testified that operations manager Carl Bowman supervises all the employees in question (EMTs, medics, ambulance drivers, helpers, dispatchers, yard employees and mechanics), a total of more than 100 employees in two different locations. In response to questions from the Petitioner's attorney, Tufaro insisted that Bowman goes back and forth between the two locations every day (in addition helping on the road a few times per week); that Bowman is available via cell phone 24 hours per day; that Bowman has not taken a vacation in five years; that other people including Tufaro himself are also available to deal with problems when Bowman cannot get to them; and that Tufaro and Bowman are "in constant contact, 24/7." Tufaro

the parties may have to resolve the dispute via the challenged-ballot procedure.

also explained that the Employer does not need to watch employees all the time. For example, the yard employees know which vehicles to wash because it is “obvious” which ones are dirty. If Tufaro or Bowman notice that a vehicle is still dirty after the fact, they might ask the yard employee about it, or possibly issue a warning. Finally, Tufaro testified that dispatchers sometimes convey information to employees if Tufaro or Bowman are not available.

Tufaro testified that all the employees in question are subject to the same benefits and personnel policies. They get the same vacation pay (one week after a year of employment, two weeks after five years), the same paid holidays, the same health benefits plan and 401(k) plan. However, ambulette driver Laurent denied that employees get any benefits. He had no knowledge of any 401(k) plan. When he made a written request to take a one-week vacation, he was told to ask dispatcher Stephen Hatcher, then manager Carl Bowman, then Andrea DeLuca (Tufaro’s step-daughter and office manager), then back to Hatcher, then to Tufaro, but he never received approval to take the week. Laurent never received any list of holidays, and claimed that he had to work on Christmas day in 2003.

The witnesses also disputed whether employees use the same bathroom in the Northern Boulevard office facility. Tufaro testified that they do, but Laurent testified that they do not. Specifically, Laurent stated that when he tried to use it, DeLuca told him that drivers are not allowed to come into the office area.

Although Tufaro initially testified that employees use the same lunchroom at the Northern Boulevard facility, he later clarified that those who work on the road (EMTs,

ambulette drivers, etc.) do not eat there. He later added that employees at the facility itself store their drinks in the refrigerator there, but most of them eat at their desks.

Laurent testified that he wears a blue North Shore Ambulette shirt and jacket. The record does not indicate which other classifications wear a uniform. Tufaro testified that most dispatchers choose to wear the blue uniforms, although they are not required to wear them as dispatchers.

Laurent testified that there are no employee meetings.

Discussion

It is well established that a certifiable bargaining unit need only be an appropriate unit, not the most appropriate unit. Morand Bros. Beverage Co., 91 NLRB 409 (1950), *enf'd*. 190 F.2d 576 (7th Cir. 1951); Omni-Dunfey Hotels, Inc., d/b/a Omni International Hotel of Detroit, 283 NLRB 475 (1987); P.J. Dick Contracting, 290 NLRB 150 (1988); Dezcon, Inc., 295 NLRB 109 (1989). The Board's task, therefore, is to determine whether the petitioned-for unit is an appropriate unit, even though it may not be the only appropriate unit or the "ultimate" unit. The Board has stated that, in making unit determinations, it looks "first to the unit sought by the petitioner. If it is appropriate, our inquiry ends. If, however, it is inappropriate, the Board will scrutinize the employer's proposal." Dezcon, Inc., *supra*, 295 NLRB at 111. Thus, the unit requested by a petitioning union is the starting point for any unit determination. In assessing the appropriateness of any proposed unit, the Board considers such community-of-interest factors as employee skills and functions, degree of functional integration, interchangeability and contact among employees, and whether the

employees have common supervision, work sites, and other working terms and conditions.

Bearing these principles in mind, I find that the petitioned-for unit of EMTs, medics, ambulette drivers and helpers constitutes an appropriate bargaining unit, notwithstanding its exclusion of dispatchers, yard employees and mechanics. Essentially, the Petitioner seeks to represent the employees who work “on the road,” actually transporting and treating patients. The petitioned-for classifications spend most of their work time away from the Employer’s two facilities, and therefore do not share a common work site with the additional classifications whom the Employer seeks to include. For that reason, it appears that the petitioned-for employees have little contact with on-premise employees. The only specific evidence of contact between these two groups is that the on-road employees receive their assignments from the dispatchers, and may need to direct questions to the dispatchers if supervisor Bowman is not available. The record does not indicate how much time the on-road employees spend in contact with the dispatchers, and there is no specific evidence of any contact with yard employees at the Northern Boulevard location. Furthermore, there is only minimal evidence of any contact whatsoever between the on-road employees and the mechanics at the Corona Avenue garage. By contrast, EMTs and medics who work in pairs in the ambulances (and, to a lesser extent, ambulette drivers and helpers) have significant contact with each other on the road.

The petitioned-for classifications also have distinct licensing requirements for treating patients and/or driving that the other classifications do not require. Because of their distinct functions and licensing requirements, there is no interchange or substitution

between the mechanics and the on-road employees, nor between the yard employees and on-road employees. Although the current dispatchers are qualified to drive the vehicles and some choose to earn overtime by putting in extra hours as EMTs, dispatchers are not required to be licensed or to drive. One dispatcher who was previously an ambulette driver, Stephen Hatcher, no longer makes any ambulette calls at all. On balance, the Employer's evidence (i.e., that dispatcher Norma Edwards chooses to make EMTs calls twice per week) does not show such substantial interchange with the dispatchers to render the petitioned-for unit, excluding this classification, inappropriate.

As for terms and conditions of employment, the record indicates a wide range of wage rates and schedules among the various classifications, both on-premises and on-road. For on-road employees, the starting wage ranges from \$6.50/hour (helpers) to \$23/hour (medics), and for on-premises employees the wage ranges from \$8/hour (yard employees) to \$23 (dispatchers). Furthermore, employees work in all kinds of different staggered shifts, some around the clock (EMTs, medics, dispatchers and yard employees) and some not (drivers, helpers, mechanics). Some employees are "paid through lunch" (EMTs, medics, dispatchers), whereas other employees (drivers, helpers, yard employees and mechanics) are supposed to receive an unpaid hour for lunch.⁷ Because of conflicts between Tufaro's and Laurent's testimony, the record does not clearly show that employees have the same benefits (vacation, 401(k)), or that they even use the same bathroom. Moreover, even assuming that the benefits for all of the Employer's employees are, for the most part, the same, I find that the record evidence does not show

⁷ Ambulette driver Laurent disputed whether he actually gets to take lunch, and complained that he is paid for one less hour than he actually works each day. For present purposes, we need not determine whether his claim is true. Rather, to assess any potential community of interest, we need to note only that the on-road employees and on-premise employees do not share a common lunch-hour policy.

sufficient common working conditions between the on-road employees and on-premise employees which would mandate their inclusion in a single bargaining unit..

To be sure, there are some factors which show the appropriateness of the unit sought by the Employer, such as common supervision and some interaction between dispatchers, mechanics and on-road employees. However, the relevant inquiry here is not whether some other unit might also be appropriate. It is well settled that there may be more than one way to group employees for purposes of collective bargaining. But, it is equally true that a certifiable bargaining unit need only be *an* appropriate unit. Morand Bros. Beverage Co., *supra*; Overnite Transportation Co., 322 NLRB 723 (1996). On balance, I conclude that the petitioned-for classifications (EMTs, medics, drivers and helpers) share a sufficiently distinct community of interest from the on-premise employees to constitute *an* appropriate bargaining unit. I particularly note their separate work location, their lack of substantial interchange with the on-premise employees, and their distinct licensing requirements. By contrast, the Employer's evidence has not demonstrated such a close community of interest between the on-road employees and on-premise employees to render the petitioned-for unit inappropriate.

A case cited in the Employer's post-hearing brief, Lifeline Mobil Medics, Inc., 308 NLRB 1068 (1992), is distinguishable. In that case, the Board included two hybrid office clerical/dispatchers in a unit of EMTs. They were the only employees remaining, apart from the 25 petitioned-for EMTs. The Board particularly noted that those two employees could not themselves constitute a separate unit, citing Park Manor Care Center, 305 NLRB 872 (1991), and the Board's reluctance to allow small units (five or

fewer employees) in the health care industry.⁸ In the instant case, by contrast, the excluded employees (dispatchers, yard employees and mechanics) number at least 12, and possibly more with the “call-takers” whose work directly relates to the dispatching function. Thus, the Board’s concern with a potential two-person unit in Lifeline does not apply here.

Accordingly, based on all the foregoing, I hereby find that the petitioned-for unit of on-road employees, including EMTs, medics, ambulette drivers and helpers, constitutes an appropriate unit for the purposes of collective bargaining. I will therefore direct an election in that unit below.

CONCLUSIONS AND FINDINGS

Based on the entire record in this proceeding, including the parties’ stipulations and in accordance with the discussion above, I conclude and find as follow:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The parties stipulated that North Shore Ambulance and Oxygen Service Inc. is a domestic corporation New York, with its principal office and place of business located at 110-18 Corona Avenue, Corona, New York. It is engaged in providing ambulance and ambulette transportation services for patients throughout New York City. During the past year, which period is representative of its annual operations generally, the Employer derived gross revenues in excess of \$500,000, and purchased and received

⁸ For the purposes of the Lifeline case, the Board assumed (without finding) that the Employer’s ambulance service was a health care institution within the meaning of Section 2(14) of the Act. The Board has not actually decided that issue. *See also American Medical Response, Inc.*, 335 NLRB 1176 (2001).

goods and supplies at its Corona facility valued in excess of \$5,000 directly from entities located outside the State of New York.

Based on the parties' stipulation, I find that the Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I hereby find, that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer, within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Based on the foregoing discussion, I find that following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time emergency medical technicians (EMTs), medics, ambulette drivers and helpers employed by the Employer out of its 110-10 Northern Boulevard, Corona, New York facility, but excluding all other employees, dispatchers, yard employees, mechanics, office clerical employees, managerial employees, guards and supervisors as defined in the National Labor Relations Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work

during that period because they were ill, on vacation or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether they desire to be represented for collective bargaining purposes by Local 338, Retail Wholesale Department Store Union, United Food and Commercial Workers.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor (Corner of Jay

Street and Myrtle Avenue), Brooklyn, New York 11201 on or before **December 15, 2005**. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional Office at least five working days prior to the commencement of the election that it has not received the notices. Club Demonstration Services, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by **December 22, 2005**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with its offices. If a party wishes to file the above-described document electronically, please refer to the Attachment supplied with the Regional

Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board website: www.nlr.gov.

Dated: December 8, 2005.

/S/ ALVIN BLYER

Alvin Blyer
Regional Director, Region 29
National Labor Relations Board
One MetroTech Center North, 10th Floor
Brooklyn, New York 11201